

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL J. WAPPLER,

Plaintiff,

v.

MATTHEW J. BREVARD, *et al.*,

Defendants.

Case No. 4:05-CV-90

Hon. Richard Alan Enslen

ORDER

Plaintiff Michael J. Wappler has moved for relief from the Partial Judgment of November 19, 2005, which dismissed certain Defendants due to failure to exhaust administrative remedies as to them. Plaintiff argues in his Motion for Relief from Judgment that the intervening decision by the United States Supreme Court in *Jones v. Bock*, 127 S. Ct. 910 (U.S. 2007) mandates an order vacating the earlier Partial Judgment.

An intervening change in law may, in appropriate circumstances, warrant relief under Rule 60. *See Blue Diamond Coal Co. v. Trustees of UMWA Combined Ben. Fund*, 249 F.3d 519, 524-26 (6th Cir. 2001) (discussing cases). Nevertheless, relief is not appropriate in this instance. The holding in *Bock* reversed two aspects of federal law relating to prisoner law suits in Michigan. It abandoned the “total exhaustion rule.” It also made clear that a particularized form of administrative exhaustion was not required by Michigan policy directives prior to the policy directive effective December 19, 2003. *See Bock*, 127 S. Ct. at 916 n.4. In this case, the conduct grieved apparently occurred prior to December 19, 2003, but the grievance process occurred for the most part after December 19, 2003 and made applicable the new policy directive language requiring specific

exhaustion. Plaintiff also delayed filing suit for a significant period of time, until August 2005, without complying with the particularized administrative exhaustion provisions of the new policy directive. As such, the Court determines that the rule in *Bock* does not dictate a finding that Plaintiff has exhausted administrative remedies as to the dismissed parties. Plaintiff was required to comply with the new policy directive language and his failure to do so in a timely manner warranted the previous dismissals.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Michael J. Wappler's Motion for Relief from Judgment (Dkt. No. 208) is **DENIED**.

DATED in Kalamazoo, MI:
April 16, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE